



Town of Hampden

Planning Board

Wednesday May 10, 2017, 7:00 pm

Municipal Building Council Chambers

Agenda

1. Administrative
 - a. Minutes – April 12, 2017
 - b. Recommendation to Town Council on appointment of an Alternate to fill the vacant seat on the Planning Board
2. Old Business
 - a. Zoning Ordinance Amendment – Accessory Apartments
3. New Business
 - a. Zoning Ordinance Amendment – §5.3, Permits
4. Staff Report
5. Planning Board Comments
6. Adjournment



Town of Hampden

Planning Board

Wednesday April 12, 2017, 7:00 pm

Municipal Building Council Chambers

Minutes

In Attendance:

Planning Board

Peter Weatherbee, Acting Chair
Kelley Wiltbank
Michael Avery
Mort Syversen
Jim Davitt
Tom Dorrity

Staff & Others

Karen Cullen, AICP, Town Planner
Ed Bearor, Town Attorney
Angus Jennings, Town Manager
Ivan McPike, Town Councilor

Jon Pottle, Attorney for MRC/Fiberight

Acting Chairman Weatherbee called the meeting to order at 7:00 pm. He noted that Joan Reilly has resigned from the Board due to the need to move out of state to handle family matters, and he thanked her for her service to the Town. He then appointed Tom Dorrity, Alternate, to be a voting member for tonight's meeting.

1. Administrative

- a. Minutes of March 8, 2017 meeting: Motion by Member Wiltbank to approve as submitted; second by Member Davitt, carried 5/0/1 (Syversen abstained).

2. Old Business: none.

3. New Business

- a. Minor Site Plan Review: MRC/Fiberight. Request for Modification to Planning Board Order and revision to the overall property boundary for the purpose of establishing frontage on Coldbrook Road to allow construction of the Fiberight facility to proceed in a timely fashion.

Acting Chairman Weatherbee noted that a public hearing is not needed for this modification per the Board Order issued last July. He invited the applicant to speak on the request.

Jon Pottle, attorney with Eaton Peabody and representing MRC/Fiberight gave a brief summary of the request:

- The change to the parcel boundary is to incorporate the right-of-way and a parcel on Coldbrook Road; it will be owned fee-interest by MRC.
- This will allow a building permit to be issued
- The proposed change to condition 21 of the Order allows MRC to get the building permit now, with surety to the town for road construction which allows the town to complete the road in the event MRC doesn't.

Planner Cullen summarized her report (attached and incorporated into the record).

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Q/A and Discussion:

- Regarding schedule of construction and opening of the facility; these changes will allow MRC to continue the construction of the roadway and infrastructure while Fiberight gets the facility construction underway, with the intent of completing everything on time.
- Attorney Bearor said that he has reviewed this proposal and believes it is necessary to allow the applicant to meet their commitments and it does not put the town at risk in any way. The proposed language regarding surety provides the protection the Town needs to ensure there is no risk regarding the construction of the road, and it provides for the possibility that if road acceptance is sought prior to the final course of pavement being laid, the surety can be reduced to the amount necessary to cover that cost.

Member Avery made a motion to grant minor site plan approval for the requested modifications as submitted; seconded by Member Syversen; voted in favor 6/0/0.

- b. Public Hearing: Proposed Zoning Ordinance Amendment to Article 1, General Administration, related to conflicts with other ordinances and the process for amending the zoning ordinance.

Manager Jennings spoke in favor of the amendment but commented that the number of voters for a petition should be lower than 10 percent of the registered voters, which at over 5,000 means one would need over 500 signatures which is too high a bar. He suggested changing it to 50 or 100 registered voters.

Member Davitt made a motion that the Planning Board accept the amendments to Article 1, General Administration, with recommendation to Town Council that it ought to pass. This motion was not seconded at this time.

Discussion ensued on the number of signatures needed for a petition. It was noted that usually when a citizen seeks a zoning change they get the support of either the Planning Board or Town Council and that body initiates the amendment; very few go through the petition process. After discussion, most members agreed that 100 registered voters was reasonable.

The original motion stands at 10 percent; motion died due to lack of a second.

Member Syversen made a motion to approve the amendments to Article 1, General Administration, and refer to Town Council with a recommendation of ought to pass, with a modification from 10 percent of the registered voters to 100 registered voters for amendments initiated by petition; seconded by Member Avery; so voted 6/0/0 by roll call vote.

- c. Public Hearing: Proposed Zoning Ordinance Amendment to Sections 3.7.4, 3.7.6, 7.2, and adding a new Section 4.25 to Article 4, all related to accessory apartments.

Discussion regarding who can rent or occupy accessory apartments; the standards in the language are designed to prevent to the extent possible rental situations that would be inappropriate to the neighborhood.

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Member Syversen made a motion that the proposed amendments to sections 3.7.4, 3.7.6, 7.2, and adding a new Section 4.25 to Article 4, all related to accessory apartments be approved as submitted and referred to Town Council with a recommendation ought to pass; seconded by Member Dorrity; so voted 6/0/0 by roll call vote.

- d. Public Hearing: Proposed Zoning Ordinance Amendment to Sections 4.7, Off-Street Parking, Drive-Thru Design, and Bufferyard Requirements, and Section 4.8, Signs (a.k.a. design standards).

Manager Jennings spoke in favor of these proposed amendments; this flexibility is very much needed to allow the Planning Board and Code Enforcement Officer to apply discretion when needed in the application of the Zoning Ordinance to specific projects. He noted one concern with sections 4.7.5 and 4.8.11, both of which refer to criteria for approval of requested waivers dealing with the market value of abutting properties. As a practical matter it is unrealistic to think anyone seeking a waiver would have an appraisal analysis done for a neighborhood, and in fact it is doubtful that the board would ever require it. He suggested striking the clause "market study".

Discussion regarding the ability of the Board to require information on market values in the rare cases where it might be needed; staff and Town Attorney Bearor believe such questions on values are within the purview of the Board under the "change in character of the neighborhood" language.

Discussion regarding terms used in the proposed amendment; changed language in §4.7.5 and 4.8.11 as follows:

- Changed "undesirable" to "unreasonably detrimental"
- Deleted "or market value" and
- Changed "abutting properties" to "surrounding properties".

Member Avery made a motion that the proposed amendments to Sections 4.7, Off-Street Parking, Drive-Thru Design, and Bufferyard Requirements, and Section 4.8, Signs be referred to Town Council with a recommendation ought to pass, with the modifications discussed tonight; seconded by Member Wiltbank; so voted 6/0/0 by roll call vote.

Member Avery noted he will be out the next 3 to 4 weeks and will miss next weeks Ordinance Committee meeting, and thanked his fellow Board members for carrying on in his absence.

The meeting was adjourned at 7:58 pm by motion of Member Wiltbank with second by Member Avery; motion carried 6/0/0.

Respectfully submitted by Karen Cullen, Town Planner

Materials reviewed or handed out at the meeting:

- Minor Site Plan application for MRC/Fiberight; Town Planner's report
- Proposed zoning amendment to Article 1
- Proposed zoning amendment for accessory apartments
- Proposed zoning amendment for flexibility in design standards

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Town of Hampden
Land & Building Services

Report on Application
Minor Site Plan Revision
MRC/Fiberight

To: Planning Board
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: April 4, 2017
RE: Report on Minor Site Plan Application for MRC/Fiberight

Project Information

Applicant: MRC/Fiberight
Site Location: Off Coldbrook Road
Zoning District: Industrial
Proposal: Revise the overall property boundary for the Fiberight parcel to include the access road and a parcel on Coldbrook Road in order to provide road frontage for the site until the construction of the access road is complete and the road is accepted by the Town of Hampden. Modify condition #21 regarding the issuance of a building permit.

As you know, the Planning Board approved the site plan request for MRC/Fiberight on July 19, 2016. Due to circumstances beyond their control, they were unable to commence construction of the roadway early enough in 2016 to meet their original construction timeframe for the Fiberight facility. At this point they have almost completed construction of the first half of the roadway, but construction of the remaining infrastructure (roadway, water, and remaining sewer and drainage) will take a number of months to complete. Town acceptance of the roadway and infrastructure is not expected until later in 2017.

Condition #21 of the Board Order reads as follows:

"The proposed new road to provide access to the development site is proposed to be constructed pursuant to the Town Ways Ordinance. No building permit for the proposed Solid Waste Processing Facility shall be issued until the proposed new road is either accepted by the Town of Hampden as a public way or, alternatively, is constructed through the base course of paving with the balance of work secured by a performance bond or other surety in an amount established by the Department of Public Works and in a form acceptable to the Town Attorney."

As you can see, obtaining a building permit for the Fiberight facility is dependent on construction of the road, either through base course with a surety or through Town acceptance. Neither of these options is realistic if MRC is going to be able to meet its' obligation to have solid waste

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accepted at the Fiberight facility starting on April 1, 2018. They need the option to obtain a building permit prior to either of those two events taking place. Therefore, they have submitted an application to modify the Board Order in two ways:

1. Modify condition #21 to provide another option for being able to obtain a building permit, and
2. Modify the boundaries of the Fiberight parcel to provide the required frontage (150') on Coldbrook Road. This modified boundary will be temporary, once the road is accepted by the town it will revert back to the approved version.

The application materials submitted include a redlined version of condition #21 and a new boundary plan.

The applicant has submitted this as a minor site plan revision in accordance with the site plan regulations in the zoning ordinance. Condition #2 of the Board Order states that if MRC requests any changes to the Order, the Planning Board is the only authority that can act on it. It further states that "insubstantial" changes can be dealt with at any Planning Board meeting, while "substantial" changes require a public hearing. Staff believes that the requests being made by MRC in this application are insubstantial and therefore a public hearing is not required. We believe this is the case since the modification in the parcel boundary is temporary and once the roadway is accepted by the Town, the Fiberight parcel will be the same as was approved by the Planning Board in July 2016. There are no modifications to the building or the Fiberight development site proposed (other than the boundary as discussed above).

Town staff (CEO, DPW, and Planner) have reviewed the submitted materials and consulted with the Town Attorney on several issues:

1. The application materials include an Option Agreement between the current land owner and MRC. This agreement contemplates a deed being prepared which will convey the roadway right-of-way and a parcel of land on Coldbrook Road for the purpose of providing the required 150' of frontage to make the Fiberight parcel a stand-alone parcel that conforms to the zoning requirements. The deed is the document which will allow the CEO to issue a building permit. The option agreement provides MRC with standing to proceed with the application before the Planning Board.
2. Staff was concerned that the transfer of land back and forth might implicate the subdivision ordinance; the town attorney has assured us that is not the case.
3. Staff questioned whether the proposed modification to condition #21 (now 21a) which changes the responsibility for setting the type and amount of surety from the DPW and Town Attorney to the Town Council was appropriate; the town attorney felt it was not a problem to make that change.
4. The Town Attorney also did not have a problem with having the Town Manager and Town Attorney assume that responsibility for setting the type and amount of surety in the proposed condition 21b.

In summary, the MRC is asking the Planning Board to approve a modification to the Board Order that will allow a building permit to be issued before the roadway is completely done, in such a way that the town will not be at risk in the development of the Fiberight facility.

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Town of Hampden
Land & Building Services

Memorandum

To: Planning Board
 From: Karen M. Cullen, AICP, Town Planner *KME*
 Date: May 2, 2017
 RE: Amendments to Zoning Ordinance regarding Accessory Apartments

The Town Council held a public hearing on May 1, 2017 to consider adoption of the proposed amendments dealing with accessory apartments. After testimony given by a resident of the Residential A district, they decided to continue the public hearing to May 15th and have directed staff to discuss the amendment and changes suggested by the resident with the Planning Board to determine what ramifications the changes might have.

I have attached the version presented to Council, which is the same as the Planning Board had approved and recommended ought to pass, along with a letter from CEO Myles Block which was submitted to Council prior to their hearing, and two exhibits submitted to Council at their hearing from the resident. In addition to this material, you can view the Council meeting online if you wish to get more information on what was said at the hearing. Once the draft minutes are completed, the Town Clerk will send them to me and I will pass them along to you.

As you may recall, the original version of these amendments included the provision that accessory apartments could be built in detached accessory structures on the same premises as the single family house to which they were accessory, such as a detached garage. That provision was removed and all accessory units are to be within the single family house (or an addition to the house). The letter from CEO Block is requesting that they be allowed in detached structures. From my experience, such units in detached structures are no more likely to become “problem” rentals than units within or attached to the main house. It is quite common for these types of zoning provisions to allow them in detached structures.

I have no comment at this time on the request of the resident, which in a nutshell is to eliminate the maximum number of bedrooms and to delete the maximum square footage (800). If you watch the meeting online, you will note that many of her comments were implying that the proposed amendments were going to eliminate the possibility of converting a single family house into a two-family house across the board; as you know this is not the case – the amendments eliminate the conversion only within the Residential A district, where they are already limited in size and appearance and are essentially accessory apartments. All other districts where two-family homes are allowed remain unchanged, except that now homeowners will have the option to construct an accessory apartment instead of creating a two-family house.

We will discuss the proposed changes to the amendment on May 10, including potential ramifications and unintended consequences of them – in all districts, not just the Residential A district. I encourage you to think about what those might be between now and the meeting.

Amend §3.7.4, Conditional Uses by deleting “two family dwelling” from the list.

- 3.7.4. Conditional Uses (Subject to Site Plan Review where applicable) - Church, nursing home, non-profit school, public schools, community building, government structure or use except storage or repair facility, ~~two family dwelling~~, congregate care facility, buildings necessary for essential services. Animals other than usual pets provided the premises consists of at least 2 1/2 acres, and animals shall be kept a minimum of 50 feet from any property line. (Amended: 8-22-94, 1-21-97)

Amend §3.7.6, Special District Regulation, by deleting sections 2, 3, 4, and 5.

- ~~2. Only existing single family dwellings may be converted to a two family dwelling through addition or division. This provision prohibits construction of new two family dwellings or complexes. Where a two family dwelling conversion is proposed the second dwelling unit shall be subordinate to the first or primary dwelling unit. The size of the primary dwelling unit shall not be regulated by this standard. The finished floor area of the subordinate dwelling unit shall be at least 500 sq. ft. so that all subordinate dwelling units constructed under this provision shall be adequate in size. For properties in which the finished floor area of the primary dwelling unit exceeds 1,000 sq. ft., the finished floor area of the subordinate dwelling unit shall not exceed 50 percent of the finished floor area of the primary dwelling unit. (Amended: 06-21-04)~~
- ~~3. Where a two family dwelling conversion is proposed the Planning Board shall determine that design features that distinguish two family dwellings from single family dwellings are avoided. Such designs may prohibit separate driveways, separate front door entrances, broken facades and other such distinguishing characteristics that call attention to the two family use of the building and site development. The Board shall encourage creative use of common driveways, side door entrances, and traditional single family architectural elements. (Amended: 06-21-04)~~
- ~~4. Where a two family dwelling conversion is proposed the Planning Board shall require a report from the Code Enforcement Officer making a determination that the proposed conversion meets applicable building codes and that the conversion is designed in such a way that the structure could easily be returned to a single family dwelling, and detailing what building alterations are required to do so. (Amended: 06-21-04)~~
- ~~5. In addition to the minimum lot area requirements found in 3.7.5. two family dwellings shall provide an additional 10,000 square feet in lot area.~~

Add to §7.2, Definitions:

Accessory Apartment: A separate housekeeping unit, complete with its own sleeping facilities, kitchen and sanitary facilities, that is contained within the structure of a single family dwelling.

Proposed new section 4.25

4.25 Accessory Apartments. Notwithstanding the minimum lot size requirements of this Zoning Ordinance, construction of an accessory apartment is allowed upon the granting of a Conditional Use Permit either within or attached to a new or existing detached single-family dwelling subject to the requirements below:

4.25.1 The purpose of the Accessory Apartment section is to:

- 4.25.1.1 Provide homeowners with a means of providing relatives with housing, enabling the homeowner to provide care and companionship in a private home setting;
- 4.25.1.2 Provide homeowners with a means of obtaining, through tenants in accessory apartments, rental income, companionship, security, and services, and thereby to enable them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave;
- 4.25.1.3 Add rental units to the housing stock to meet the needs of smaller households, both young and old; and
- 4.25.1.4 Protect stability, property values, and the residential character of a neighborhood by ensuring that accessory apartments are installed only in owner-occupied houses and under such additional conditions as may be appropriate to further the purposes of this ordinance.

4.25.2 Accessory Apartment Standards. The following standards must be met for a Conditional Use Permit to be granted:

- 4.25.2.1 Only one accessory apartment may be created within a single-family dwelling.
- 4.25.2.2 The owner(s) of the residence in which the accessory apartment is located must occupy at least one of the dwelling units on the premises.
- 4.25.2.3 The accessory apartment shall be clearly a subordinate part of the single family dwelling, designed so that the appearance of the building remains that of a single family residence. Where feasible, any new entrances should be located on the side or rear of the building.
- 4.25.2.4 An accessory apartment shall occupy no more than 40 percent of the living area of the structure and shall be no greater than 800 square feet nor have more than one bedroom. An addition to the original building is permitted provided that the addition is designed in such a manner as to retain the appearance of the building as a single family dwelling.
- 4.25.2.5 In order to provide for the development of housing units for disabled and handicapped individuals, the Planning Board will allow reasonable deviation from these limits to allow installation of features that facilitate access and mobility for the occupants in cases where an accessory apartment is designed or remodeled for such individuals.
- 4.25.2.6 There shall be at least one dedicated off-street parking space provided for the accessory apartment, and to the extent feasible it shall be located to the side or the rear of the structure.



Hampden Public Safety

Emergency Services Working Together

106 Western Avenue
Hampden, ME 04444



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Phone: 207-862-4000

Email: publicsafety@hampdenmaine.gov

<http://www.hampdenmaine.gov/>

<https://www.facebook.com/hampdenpublicsafety>

Police—Fire—EMS

Code Enforcement
Building Inspection
Fire Inspection

Local Health Office

Joseph L. Rogers
Director of Public Safety
Kandy A. McCullough
Admin. Office Manager

Police
T. Daniel Stewart
Sergeant / SRO
Scott A. Webber
Sergeant
Christian D. Bailey
Sergeant
Joel Small
Investigator
Joseph D. Burke
Patrol Officer
Benson G. Eyles
Patrol Officer
Shawn F. Devine
Patrol Officer
Marc Egan
Patrol Officer
William Miller
Patrol Officer
Jeffrey L. Rice
Patrol Officer

Fire
Jason Lundstrom
Lieutenant / Fire Inspector
Daniel Pugsley, Jr.
Lieutenant / Paramedic
Matthew St. Pierre
Lieutenant / Paramedic
Myles Block
CEO / Paramedic
Jared LeBarnes
Building Inspector / Paramedic
Joseph Duntton
Paramedic / Chaplain
Matthew Thomas
FF / Paramedic
Shawn McNally
FF / Paramedic
Matthew Roope
FF / Paramedic
Chris Liepold
FF / Paramedic

April 25, 2017

Mayor Ryder & Members of the Town Council
106 Western Avenue
Hampden, Maine 04444

Re: Accessory Apartments Public Hearing Comments

Mayor Ryder and Hampden Town Councilors:

I would like to submit the following for your consideration in your hearing for the Zoning Amendment for Accessory Apartments:

4.25 Accessory Apartments. Notwithstanding the minimum lot size requirements of this Zoning Ordinance, construction of an accessory apartment is allowed upon the granting of a Conditional Use Permit either within or attached to a new or existing detached single-family dwelling or within or attached to a new or existing detached accessory structure subject to the requirements below:

4.25.2.1 Only one accessory apartment may be created on the property within a single-family dwelling.

4.25.2.3 The accessory apartment shall be clearly a subordinate part of the single family dwelling, designed so that the appearance of the building remains that of a single family residence or detached accessory structure. Where feasible, any new entrances should be located on the side or rear of the building.

4.25.2.4 An accessory apartment shall occupy no more than 40 percent of the living area of the single family home and shall be no greater than 800 square feet nor have more than one bedroom. An addition to the original building is permitted provided that the addition is designed in such a manner as to retain the appearance of the building as a single family dwelling or detached accessory structure (e.g. garage, carriage house).

Add to §7.2, Definitions: Accessory Apartment: A separate housekeeping unit, complete with its own sleeping facilities, kitchen and sanitary facilities, that is contained within the structure of a single family dwelling or detached accessory structure on premises.

I have received requests for this configuration in the past. Some applications I have been able to permit as a 2nd dwelling unit on the property provided the lot met the required increase in lot size and frontage but others have had to be denied.

The Residential A Zone is clearly the area for Single Family Dwellings but by not allowing accessory apartments in accessory structures I believe there is an undue hardship on multiple lots within this zone that could be too small to permit an additional dwelling unit without these changes. I believe with the language above and the Conditional Use review by the Planning Board, the integrity of the appearance of the Residential A Single-Family Zone would be maintained.

There is a concern that these accessory apartments may become rental units. In my time in Code Enforcement rental properties in the Residential A zone have not been an area of complaints or violations. The requirement of having the owner of the property living in one of the units gives a contact on-site if any complaints arise. Thank you for your consideration.

Respectfully Submitted,

Myles M. Block
Code Enforcement Officer

FACT SHEET: FAIR HOUSING, ZONING & LAND USE



Fair Housing Center
of West Michigan

20 Hall Street SE
Grand Rapids, MI 49507
616-451-2980 phone
616-451-2657 fax
866-389-FAIR
fhcwm.org

What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act (FHA) and Michigan laws protect people from discrimination in housing based on the following *protected classes*: race, color, religion, sex, national origin, familial status, disability, marital status, and age. Discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance. Fair Housing laws also apply to zoning and planning practices.

How does the Fair Housing Act apply to zoning and land use?

The FHA prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals protected by fair housing law, whether intentionally or by discriminatory effect. Discriminatory effect can be established by showing that an action, such as a zoning decision, while facially neutral, has either an adverse impact on a particular minority group or harm to the community generally by the perpetuation of segregation.

The FHA prohibits discrimination in a *dwelling* which means “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof” (42 USC §3602(b)). Therefore, decisions related to the development or use of such land must comply with the FHA’s regulations and cannot be based upon the protected class (i.e. race, religion, disability, etc.) of the residents or prospective residents. The FHA also requires municipalities and local governments to make *reasonable accommodations* to zoning and land use rules, policies, practices and procedures as necessary to provide an individual with a disability equal housing access.

What is a reasonable accommodation?

Reasonable accommodations, as defined by the FHA, are changes in rules, policies, or practices that are necessary to afford persons or groups of persons with disabilities equal opportunity to use and enjoy housing. The FHA requires municipalities to make reasonable accommodations in land use and zoning policies and procedures. Reasonable accommodations provide a means of requesting from the local government flexibility in the application of land use and zoning regulations, or, in some instances, even a waiver of certain restrictions or requirements.

For example: a zoning board grants an accommodation to designate a group of individuals with disabilities who intend to live together in a group or recovery home as a “family” so as to allow more unrelated adults in a single family home than normally permitted under zoning restrictions.

Approving New Housing Developments

Placement of new or rehabilitated housing for lower-income people is one of the most controversial issues communities face. If fair housing objectives are to be achieved, the goal must be to avoid high concentrations of low-income housing and to approve housing developments that will promote integration. A municipality considering a proposal from an independent housing developer or provider to provide integrated housing within the municipality’s jurisdiction must **not** deny the housing without careful consideration of the need for new integrated housing opportunities in the vicinity of the developer’s proposed project and the degree of residential segregation in that community in light of the population demographics in the overall metropolitan area.

Combatting NIMBYism

Whether the persons to be served are families with children, persons with disabilities, homeless persons, or lower-income minorities, many communities feel strongly that housing for these persons should be provided but “not in my back yard” (NIMBY). This attitude seriously affects the availability of housing for people in these groups and is one of the most difficult challenges jurisdictions encounter in promoting fair housing objectives. Discriminatory stereotypes, fears and comments about residents of prospective residents of a certain dwelling or area should **not** influence municipal zoning or land use decisions.

Definition of “Family” and “Single-family” Residential Zones

Single-family residential zones allow family residential use by right, i.e., without any conditional or special use permit, and are not in and of themselves discriminatory. Local governments have their own definitions of “family”, and such definitions may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups regardless of race, religion, etc. However, they may be discriminatory when they exclude group homes for persons with disabilities, or if group homes are allowed only by conditional or special use permit. Further, policies that have a ceiling of 4, or fewer, unrelated adults in a household may be considered discriminatory if they have an adverse impact on minorities, families with children or people with disabilities. Further, in Michigan, a definition of family cannot be restrictive on the basis of marital status, and cannot define family as persons “related by blood, marriage or adoption”.

Land Use Regulations

Zoning policies such as large minimum lot requirements, minimum multifamily zoning and age-restricted zoning may restrict and limit the ability for lower income families and families of color from moving into certain neighborhoods and suburbs. Such strict zoning restrictions limit the affordability and number of rental multifamily housing opportunities and should be carefully considered in light of fair housing laws.

Suggested Fair Housing Strategies

Adopt a Reasonable Accommodation Policy

This will provide a written procedure, especially for developers of housing for persons with disabilities, to follow when requesting reasonable accommodations in zoning and land use decisions in addition to guidelines for the Planning Commission to follow when considering requests.

Adopt an Inclusionary Zoning Policy

Inclusionary zoning promotes mixed-income development and results in many benefits for communities, particularly the creation of affordable places to live in desirable neighborhoods. Neighborhoods which are ethnically and economically integrated provide greater opportunity for creating a diverse work force and more diverse and vibrant communities.

Affirmatively Furthering Fair Housing

- Consider specific changes that should be made in zoning or building occupancy ordinances or regulations to foster inclusion of lower-income housing, including housing accessible to persons with disabilities and families with children in developments intended for households with higher incomes.
- Ensure that the ordinances and regulations do **not** contain special rules or restrictions for housing that only apply to individuals with physical or mental disabilities (i.e. requiring individuals with mental disabilities to show they had the capacity to live independently, or prohibiting a group of persons with mental illness from residing in an area where other groups of unrelated adults may reside)
- Consider specific changes that should be made in policies and procedures, other than those relating to zoning and building occupancy, to promote greater variation in the location of lower-income housing.

Regional Planning

For jurisdictions located in metropolitan areas, serious consideration should be given to ways they can participate in cooperative, inter-jurisdictional planning for construction of assisted housing.

and that the neighborhood will soon be virtually all black. These practices are illegal under Section 3604(e), and courts have rejected the argument that 3604(e) places an unconstitutional prior restraint on the right to free speech. *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115 (5th Cir. 1973).

5. Racial Steering

Racial steering is where a real estate agent steers white persons to one community or area and minorities to another community or area. This practice is specifically prohibited under Section 3604(e) and was recognized as illegal by the Supreme Court in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), and *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

The Seventh Circuit Court of Appeals has held the proof of a discriminatory motive is required in a steering case. *Village of Bellwood v. Dwivedi*, 895 F.2d 1521 (7th Cir. 1990). A broker may show he was serving customer preferences so long as the broker was not encouraging those preferences. Thus, evidence that black testers were shown homes in certain neighborhoods and white testers in other neighborhoods will support but will not compel an inference of illegal steering.

6. Exclusionary Zoning

Zoning that operates to exclude a class protected under the law may be illegal. If the attack is grounded on the Constitution, the plaintiff will have the burden of proving purposeful discrimination as defined in the Supreme Court's opinion in *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977).

However, the lower courts have required a lesser standard when the suit is filed under the Fair Housing Act. On remand, in the *Arlington Heights* case, the Seventh Circuit Court of Appeals held that a significant discriminatory effect could establish a violation of the Fair Housing Act. 558 F.2d 1283 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978). In a leading case, *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 937 (2d Cir.), aff'd per curiam, 488 U.S. 15 (1988), the Court held that exclusionary zoning could violate the Fair Housing Act either by a showing that it had a disparate impact on a protected class or by showing that it perpetuated segregation in the community. Although the Supreme Court has never squarely ruled on the issue, virtually every federal court of appeals has applied some aspect of the impact test to exclusionary zoning. HUD has recently adopted a regulation accepting the disparate impact theory and setting a national standard for defining a disparate impact. 78 Fed. Reg. 11460 (Feb. 15, 2013).

The "Not in My Back Yard" (NIMBY) factor is an unfortunate reality. With the adoption of the 1988 amendments, group homes for the disabled received protection under the Fair Housing Act. Although one court of appeals has held that zoning against persons with disabilities is to be reviewed according to the more deferential rational basis standard used in equal protection cases, *Familystyle of St. Paul v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991), the Act itself does not distinguish between persons with disabilities and other classes protected by the Act, and the same standard of review should be applied to all classes under the Fair Housing Act. In *Familystyle*, the Court of Appeals upheld an ordinance that required the dispersal of group homes, but other courts have held that such laws unfairly single out group homes for persons with disabilities and unlawfully impose special restrictions on them not applicable to other housing in the community. *Larkin v. Michigan*, 89 F.3d 289 (6th Cir. 1996).



Town of Hampden
Land & Building Services

Memorandum

To: Planning Board
From: Karen M. Cullen, AICP, Town Planner *KMC*
Date: May 1, 2017
RE: Amendment to Zoning Ordinance – Permits

Under the current language of §5.3, Permits, whenever there is a new tenant occupying an existing business space in Hampden, Section 5.3.2 of the Zoning Ordinance requires that a Certificate of Compliance be issued by the Code Enforcement Officer. The practice in Hampden has been that the applicant (business person) fills out a form and pays a \$100 fee, then the CEO and Life Safety Inspector visit the site to conduct their inspections. The life safety inspection is to ensure the smoke detectors and any fire suppression (e.g. sprinklers) required by code are installed and in working order. The CEO portion of the inspection basically consists of verifying that the use stated on the application is the use in fact, and that it complies with the Zoning Ordinance.

In my experience, a Certificate of Compliance (C of C) is not used to verify that a use complies with zoning, as that determination is typically made before a tenant moves into a space (most business people check with the town prior to renting or buying a space to ensure their business is a permitted use in that location). Rather, a C of C is used to verify that a new development is in compliance with the approved site plan. Towns normally handle this C of C inspection in a couple of different ways, depending on staffing:

1. The code enforcement staff perform the inspection of the site and the building (in the case of new construction or additions to buildings), checking the site against the approved site plan; or
2. The code enforcement staff (building inspector, life safety inspector, health inspector) inspects the building for code issues and the planning staff (town planner) inspects the site for compliance with the site plan. In this case, the C of C is issued by the planning staff after the code enforcement staff signs off on their final inspections.

After discussing the issue with Code Enforcement Officer Myles Block, he is in agreement that it would be wise to amend the zoning ordinance to eliminate the need for a C of C for situations where there is no new construction, no changes to a structure (interior or exterior), and no changes

to a site (e.g. additional parking). The life safety portion of the current C of C inspection process is actually already covered in the town's Life Safety Code Ordinance.

It occurs to me that one of the main problems is that the term "change of use" is not defined. While it might be reasonable to require a C of C when a building's use is changing from one use category to another (e.g. commercial to industrial, institutional to commercial), it really doesn't make sense to require it for a change from an office space to retail or especially one retail business to another.

Section 4.1, site plan review, states that site plan review and approval is not required for a change in use from one permitted use in a zone to another provided it is limited to occupancy of an existing structure, there is no increase in floor area of the structure, there is no change in exterior site improvements, and the number of parking spaces required under the zoning ordinance is not greater than the number required for the previous use. While this is not technically a definition of "change of use," this interpretation could be applied for the C of C issue in the interim until the zoning amendments are adopted and become effective.

I believe the best way to correct this in the zoning ordinance is to require a Certificate of Occupancy for anything that requires a building permit, and a Certificate of Compliance for anything that requires site plan review, a conditional use permit, or subdivision review (where new public infrastructure is involved). The primary concern with a tenant moving into an existing space is life safety, which is handled via the Life Safety Code Ordinance. In situations where someone moves into a space and the business they are conducting is not permitted in that district, then it is an enforcement issue and the CEO has the authority to deal with such situations.

Amend §5.3 Permits

5.3 Permits – Application for a building permit and/or a certificate of compliance shall be made in accordance with the following ~~concurrently with the initial application.~~

5.3.1.7. No building permit, demolition permit, earth moving permit, sign permit, certificate of occupancy, or certificate of compliance shall be issued without payment of fees in accordance with the Town of Hampden Fees Ordinance. (Amended: 11-17-03)

5.3.1.8. Building permits for structures to be located on subdivision lots shall not be issued by the Code Enforcement Officer until the road and infrastructure has been accepted by the Town in accordance with the Town Ways Ordinance. ~~all improvements, including public utilities (sewer, water and electrical), roads and drainage facilities as approved by the Planning Board and required by town ordinances, are completed to the satisfaction of the Town designated engineering consultant and the road, if any, has been accepted by the Town Council as a town way.~~ (Amended: 03-01-10)

5.3.2. Certificate of Occupancy and Certificate of Compliance

5.3.2.1 Certificate of Occupancy. A certificate of occupancy is required for any structure requiring a building permit.

1. After completion of the work permitted by the building permit and stabilization of the site, the applicant shall submit an application for a certificate of occupancy to the Code Enforcement Officer.
2. The Code Enforcement Officer, Building Official, and Fire Inspector shall inspect the site and the Code Enforcement Officer shall issue the certificate of occupancy only upon finding that the building, structure, or site and the use or occupancy thereof comply with the provisions of this Ordinance, any other applicable codes/ordinances, and of any site plan or subdivision plan approved by the Planning Board (see certificate of compliance, below).
3. The Code Enforcement Officer shall issue or deny the certificate of occupancy within fifteen days of receipt of the application.
4. Certificates of occupancy for structures on subdivision lots may only be granted if the public improvements in accordance with the Planning Board approved Subdivision Plan or phase are completed and associated roads, if any, are accepted by the Town Council.
5. The Code Enforcement Officer may issue one conditional certificate of occupancy, valid for no more than twelve (12) months from the date issued, upon the request of the permit holder, if in the judgment of the Code Enforcement Officer the portion or portions of the structure may be occupied safely. Once the structure is completed, the applicant shall apply for a "final" certificate of occupancy.
6. The Code Enforcement Officer shall maintain a public record of all certificates of occupancy which are issued.

5.3.2.2 Certificate of Compliance. A certificate of compliance is required for any development requiring a site plan approval, conditional use permit, or subdivision approval from the Planning Board.

1. After completion of the work permitted by the Planning Board and stabilization of the site, the applicant shall submit an application for a certificate of compliance to the Code Enforcement Officer.
2. The Code Enforcement Officer, Fire Inspector, and Town Planner shall inspect the site and the Code Enforcement Officer shall issue the certificate of compliance only upon finding that the site, including all buildings, structures, site improvements, use, and occupancy comply with the provisions of this Ordinance, other applicable ordinances, and the site or subdivision plan and decision (Board Order) approved by the Planning Board.
3. The Code Enforcement Officer shall issue or deny the certificate of compliance within fifteen days of receipt of the application.
4. Certificates of compliance for developments within approved subdivisions may only be granted if the public improvements in accordance with the Planning Board approved subdivision plan or phase are completed and associated roads, if any, are accepted by the Town Council.
5. The Code Enforcement Officer may issue one conditional certificate of compliance, valid for no more than twelve (12) months from the date issued, upon the request of the permit holder, if in the judgment of the Code Enforcement Officer and Town Planner the completed portion or portions of the site may be occupied safely. Once the development is completed, the applicant shall apply for a "final" certificate of compliance. Failure to do so shall constitute a violation of the Planning Board approval.
6. The Code Enforcement Officer shall maintain a public record of all certificates of compliance which are issued.

5.3.2.3-7. ~~The Code Enforcement Officer or Building Inspector shall in writing, suspend or revoke a certificate of occupancy or a certificate of compliance issued under the provisions of this ordinance if the certificate was issued in error, if the certificate was issued on the basis of incorrect information supplied by the applicant, or where it is determined that the building, or structure, or site portion thereof is in violation of the Town of Hampden Zoning Ordinance.~~

5.3.2.1 ~~No building or other structure for which a building permit is required shall be occupied or used until and unless a certificate of compliance has first been obtained from the Code Enforcement Officer and the Building Inspector. In addition, a certificate of compliance shall be required for the following activities undertaken in the Town of Hampden:~~

- ~~1. The change of use of a lot or structure;~~
- ~~2. The resumption of use in a structure which has been abandoned for the continuous period of one year;~~
- ~~3. The establishment of a new use of a lot or structure.~~

5.3.2.2. ~~A Certificate of Compliance shall be issued only after the work on the building or structure is completed and the site has been stabilized. If a site plan approval has been obtained from the~~

~~Planning Board then all of the improvements shown on the site plan, including off-site improvements, must be completed in accordance with the approved site plan.~~

- ~~5.3.2.3. It shall be unlawful to use or occupy or permit the use or occupancy of any land, building, structure or part thereof for which a building permit is required until a certificate of compliance is issued therefore by the Code Enforcement Officer and the Building Inspector and endorsed to the effect that the proposed use of the land, building, or structure conforms with the requirements of this Ordinance, any other codes or ordinances of the Town of Hampden, and with applicable state statutes or regulations.~~
- ~~5.3.2.4. After completion of the work permitted by the building permit, the applicant shall notify the Building Inspector, who with the Code Enforcement Officer, shall issue or deny the certificate of compliance within fifteen days. The Code Enforcement Officer and Building Inspector shall issue the certificate of compliance only upon finding that the building, structure, or site and the use or occupancy thereof comply with the provisions of this Ordinance, and of any site plan or subdivision plan approved by the Planning Board. The Code Enforcement Officer shall maintain a public record of all certificates of compliance which are issued.~~
- ~~5.3.2.5. Certificates of Compliance for structures on subdivision lots may only be granted if the public improvements in accordance with the Planning Board approved Subdivision Plan or if approved in phases the approved phase are completed and associated roads, if any, are accepted by the Town Council.~~
- ~~5.3.2.6. The Code Enforcement Officer may issue one conditional certificate of compliance, valid for no more than six (6) months from the date thereof, upon the request of the permit holder, if in the judgment of the Code Enforcement Officer portion or portions of the structure and site development may be occupied safely. Once the project is completed, the Code Enforcement Officer upon finding that the standards of 5.3.2.3 have been met shall issue a Certificate of Compliance.~~

Amend §7.2 Definitions:

Certificate of Occupancy: A certification by the Town stating that a structure has been constructed in compliance with all applicable codes and approvals. This includes MUBEC, the Hampden Life Safety Code Ordinance, the Hampden Zoning Ordinance, the State of Maine Plumbing Code, and the building permit that was issued for the structure.

Certificate of Compliance: A certification by the Town stating that a development site has been constructed in compliance with all applicable codes and approvals. This includes the Hampden Zoning Ordinance, Hampden Subdivision Ordinance, and the approved site plan or subdivision plan for the development.